

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TEKLEMARIAM DANIEL HAGOS ,

Plaintiff,

V.

CITY OF SEATTLE ,

Defendant.

CASE NO. 2:22-cv-00191-RSM-BAT

REPORT AND RECOMMENDATION

Plaintiff, a detainee at the King County Jail, pending criminal charges, filed a *pro se* complaint under 42 U.S.C. § 1983 alleging Defendant violated his rights. Dkt. 6. As relief he seeks dismissal of the criminal case against him and monetary damages. *Id.* at 9. By separate order Plaintiff has been granted leave to proceed in forma pauperis.

The Court has reviewed the complaint, and recommends it be DISMISSED with prejudice under 28 U.S.C. §§ 1915A(a) and 1915(e)(2). Because the complaint's deficiencies cannot be cured the Court recommends leave to amend be denied as futile.

DISCUSSION

A. Relevant Legal Standards

The Court is required to screen complaints filed by prisoners, such as Plaintiff, under 28 U.S.C. § 1915A(a), and must “dismiss the complaint, or any portion of the complaint, if it is: (1)

1 frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks
 2 monetary relief from a defendant who is immune from such relief.” § 1915A(b); *accord* §
 3 1915(e)(2); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

4 To avoid dismissal, a complaint must contain sufficient factual matter, accepted as true,
 5 to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009).
 6 The factual allegations must be “enough to raise a right to relief above the speculative level.”
 7 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint may be dismissed if it
 8 lacks a cognizable legal theory or states insufficient facts to support a cognizable legal theory.
 9 *Zixiang v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013).

10 Plaintiff alleges Defendant violated his federal constitutional rights in a complaint
 11 brought under § 1983. To sustain a § 1983 civil rights claim, Plaintiff must show (1) he suffered
 12 a violation of rights protected by the Constitution or created by federal statute, and (2) the
 13 violation was proximately caused by a person acting under color of state or federal law. *West v.*
 14 *Atkins*, 487 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To
 15 satisfy the second prong, plaintiff must allege facts showing how individually named defendants
 16 caused or personally participated in causing the harm alleged in the complaint. *Arnold v. IBM*,
 17 637 F.2d 1350, 1355 (9th Cir. 1981).

18 **B. Plaintiff's Allegations**

19 Plaintiff alleges the City of Seattle Municipal Court of Seattle violated his rights. In
 20 specific, the complaint alleges in Count I that "the 14th Amend. Equal Protection was violated by
 21 Courtroom 901-9th floor Honorable Damon Shadid on the grounds that essential witnesses was
 22 not present. Dkt. 6 at 4. In support of this Count, the complaint alleges he sought issuance of
 23

1 criminal subpoenas and there is no indication that the subpoenas were served on Police Officer
 2 Eric Munoz. *Id* at 4-5.

3 In Count II, Plaintiff alleges the "6th Amend. was violated by Courtroom 901-9th floor
 4 Honorable Damon Shadid. *Id.* at 6. Count II appears rely upon motions before Judge Shadid and
 5 the judge's rulings. Count II states "Criminal law – out-of-court statements and hearsay in
 6 general; the confrontation clause and right to cross-examination was violated; *Crawford v.*
 7 *Washington*; favorable evidence was suppressed; a confederate's statement admitting "he had
 8 done the actual killing was suppressed; *Brady v. Maryland*; the court order "pointed out a
 9 psychiatric examination should be performed," but the police report stated there was no
 10 indication of major mental illness; and Plaintiff told his attorney he was falsely imprisoned. *Id.* at
 11 6-8.

12 **C. Defendants are Immune**

13 The complaint alleges actions taken in Plaintiff's pending criminal case by Judge Hadid
 14 in Courtroom 901 violated Plaintiff's constitutional rights. The complaint should be dismissed
 15 with prejudice because Plaintiff is suing an immune defendant, Seattle Municipal Court Judge
 16 Hadid. Counts I and II both alleges Judge Hadid violated Plaintiff's rights regarding discovery
 17 (subpoena and *Brady*); the right to cross-examine witnesses; and issued orders related to
 18 Plaintiff's mental health. Judge Hadid has absolute judicial immunity because the complaint
 19 alleges acts that occurred in Courtroom 901 regarding Plaintiff's pending criminal case. These
 20 actions were all performed within the judge's judicial capacity, and thus Judge Hadid is
 21 absolutely immune. *Mireles v. Waco*, 502 U.S. 9, 9-12 (1991); see *Stump v. Sparkman*, 435 U.S.
 22 349 (1978); *accord Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam)
 23 ("Judges are absolutely immune from damages actions for judicial acts taken within the

1 jurisdiction of their courts.”) (citation omitted). Judicial immunity applies even when a judge
 2 acts in excess of his or her authority. *Id.* at 356. This strong immunity protects judicial
 3 independence by insulating judges from vexatious actions prosecuted by disgruntled litigants.
 4 *Forrester v. White*, 484 U.S. 219, 225 (1988). This immunity is immunity from suit, not a mere
 5 defense to liability, so a defendant with absolute immunity is entitled to dismissal before the
 6 commencement of discovery. *Mitchell v. Forsyth*, 472 U.S. 511, 526-27 (1985).

7 **D. The Complaint should be Dismissed as Duplicative**

8 The instant complaint pertains to the same subject matter and occurrences during the
 9 same time period, seeks the same relief, and alleges the same harms as are asserted in the earlier-
 10 filed case pending before the Honorable James L. Robart and the Honorable Theresa L. Fricke.

11 *See* 2:21-cv-01640-JLR-TLF.

12 “Duplicative lawsuits filed by a plaintiff proceeding *in forma pauperis* are subject to
 13 dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e).” *Goods v. Wasco State*
 14 *Prison*, No. 119CV01318JLTPC, 2019 WL 4670217, at *1 (E.D. Cal. Sept. 25, 2019); *see, e.g.*,
 15 *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *McWilliams v. State of Colo.*, 121
 16 F.3d 573, 574 (10th Cir. 1997); *Pittman v. Moore*, 980 F.2d 994, 994-95 (5th Cir. 1993); *Bailey*
 17 *v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). An *in forma pauperis* complaint repeating
 18 pending or previously litigated claims may be considered abusive and dismissed under § 1915.
 19 *Goods*, 2019 WL 4670217, at *1; *Cato*, 70 F.3d at 1105 n.2; *Bailey*, 846 F.2d at 1021. Likewise,
 20 “[a] prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it ‘merely
 21 repeats pending or previously litigated claims.’” *Spatcher v. Gore*, No. 3:20-CV-01089-JAH-LL,
 22 2020 WL 5576724, at *2 (S.D. Cal. Sept. 16, 2020) (quoting *Cato*, 70 F.3d at 1105, n.2
 23 (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted); *Kehano v.*

1 *Hawaii*, 202 Fed.Appx. 208 (9th Cir. 2006) (unpublished) (District court properly dismissed
 2 claim as duplicative pursuant to 28 U.S.C. § 1915A(b)(1)). “Plaintiffs generally have no right to
 3 maintain two separate actions involving the same subject matter at the same time in the same
 4 court against the same defendant.” *Adams v. California Department of Health Services*, 487 F.3d
 5 684, 688 (9th Cir. 2007). “Repeating the same factual allegations asserted in an earlier case, even
 6 if now filed against new defendants, is subject to dismissal as duplicative.” *Goods*, 2019 WL
 7 4670217, at *1; *see, e.g.*, *Bailey*, 846 F.2d at 1021; *Van Meter v. Morgan*, 518 F.2d 366, 368 (8th
 8 Cir. 1975); *see also*, *Serlin v. Arthur Anderson & Co.*, 3 F.3d 221, 223 (7th Cir. 1993) (“[A] suit
 9 is duplicative if the claims, parties, and available relief do not significantly differ between the
 10 two actions.” (internal quotation marks and citation omitted)).

11 District courts retain broad discretion to control their dockets and “[i]n the exercise of
 12 that power they may impose sanctions including, where appropriate, default or dismissal.”
 13 *Adams*, 487 F.3d at 688 (citation omitted). “After weighing the equities of the case, the district
 14 court may exercise its discretion to dismiss a duplicative later-filed action.” *Id.*; *see also* *M.M. v.*
 15 *Lafayette Sch. Dist.*, 681 F.3d 1082, 1091 (9th Cir. 2012) (“a district court has broad discretion to
 16 control its own docket, and that includes the power to dismiss duplicative claims”). “Dismissal of
 17 the duplicative lawsuit, more so than the issuance of a stay or the enjoinder of proceedings,
 18 promotes judicial economy and the comprehensive disposition of litigation.” *Id.*, at 692–94.

19 Before filing the instant complaint, Plaintiff filed another § 1983 complaint against Police
 20 Officers Eric Munoz, Jonathan Cruuz, Michael Synder, and defense lawyer Emma Carlin. *See*
 21 *Hagos v. Munoz, et al.*, 21-1640-JLR-TLF, Dkt 1, 9. In his original complaint, Plaintiff alleged
 22 defendants violated his rights when he was arrested on November 11, 2020. Dkt. 1. In his
 23 amended complaint, Plaintiff alleges the police violated his rights when he was arrested and his

1 defense lawyer is ineffective. Dkt. 9. Plaintiff amplified the allegations contained in the amended
2 by filing a response to a show cause order, Dkt. 10, and a miscellaneous document, Dkt. 11.
3 Plaintiff's response to the show cause includes the same allegations contained in the complaint
4 before this court. The response alleges violations of *Crawford v. Washington*; "hearsay in
5 general," "right to confront witnesses" and "cross-examination and impeachment," *Brady v.*
6 *Maryland*, "suppression of favorable evidence; and ineffective counsel. See Dkt. 10 (earlier
7 case).

8 In the miscellaneous document, Dkt. 11, Plaintiff alleges Judge Damon Hadid "cut me
9 off" and stated Plaintiff needed to file a motion if he wanted the court to address Plaintiff's
10 allegations. Plaintiff again contends the following rights were violated: the right to confrontation;
11 and the failure to provide favorable evidence under *Brady v. Maryland*.

12 The present complaint thus overlaps the prior complaint. Both the present and prior
13 complaint allege Plaintiff's rights were violated by the arresting officers leading to false
14 imprisonment and improper prosecution. Both allege Judge Hadid violated Plaintiff's rights in a
15 variety of ways revolving around decisions regarding discovery, cross-examination, and *Brady*
16 material. Accordingly, the Court recommends Plaintiff's claims and the action as a whole be
17 dismissed as duplicative of the earlier filed action, which is still pending.

18 CONCLUSION

19 The Court recommends the instant complaint be dismissed with prejudice. The complaint
20 alleges that Judge Hadid violated Plaintiff's rights for acts committed in Courtroom 901,
21 regarding, discovery hearsay, cross-examination, *Brady* evidence and Plaintiff's mental status.
22 As all of the alleged acts were within Judge Hadid's judge's judicial capacity, he is absolutely
23 immune. Additionally, last year, Plaintiff filed another complaint regarding the same areas of

1 concern raised in this complaint. The present complaint should thus be dismissed as duplicative
2 of the earlier and still pending civil rights action. Finally, the Court notes it must abstain from
3 interfering in a pending state criminal prosecution, under *Carden v. Montana*, 626 F.2d 82, 83-84
4 (1980), cert. denied, 449 U.S. 1014 (1980); *see also Younger v. Harris*, 401 U.S. 37, 43-54
5 (1971). Abstention is appropriate because the complaint rests on actions occurring in a pending
6 criminal case. The Court recommends that the complaint be dismissed without leave to amend.
7 Any amendment would be futile in this case. *See Edwards v. Mondora*, 700 Fed. Appx. 661 (9th
8 Cir. 2017) (Affirming dismissal of pro se civil rights actions on grounds leave to amend would
9 be futile).

10 **OBJECTIONS AND APPEAL**

11 This Report and Recommendation is not an appealable order. Therefore, a notice of
12 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
13 assigned District Judge enters a judgment in the case.

14 Objections, however, may be filed no later than **March 25, 2022**. The Clerk should note
15 the matter for **March 25, 2022**, as ready for the District Judge's consideration. The failure to
16 timely object may affect the right to appeal.

17 DATED this 11th day of March, 2022.

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19 
20 BRIAN A. TSUCHIDA
21 United States Magistrate Judge
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